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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

TODD LEE LANE et al.,

Defendants and Appellants.

B231772

(Los Angeles County
Super. Ct. No. KA090427)

APPEAL from a judgment of the Superior Court of Los Angeles County, Carol Williams Elswick, Judge. Affirmed with modifications.

Law Offices of James Koester and James Koester, under appointment by the Court of Appeal, for Defendant and Appellant Todd Lane.

Law Office of David Andreasen and David Andreasen, under appointment by the Court of Appeal, for Defendant and Appellant Amber Ann Hanson.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Michael R. Johnsen, Lawrence E. Daniels and Eric E. Reynolds, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendants, Todd Lee Lane and Amber Ann Hanson, appeal from multiple felony convictions. Mr. Lane appeals after he was convicted in count 1 of methamphetamine transportation. (Health & Saf. Code, § 11379, subd. (a).) In count 2, Mr. Lane was convicted of methamphetamine possession in violation of Health and Safety Code section 11377, subdivision (a). In addition, Mr. Lane was found to have served five prior prison terms within the meaning of Penal Code section 667.5, subdivision (b). Mr. Lane was sentenced to nine years in prison. Ms. Hanson was convicted of methamphetamine possession (Health & Saf. Code, § 11377, subd. (a)); receiving stolen property (Pen. Code, § 496, subd. (a)); and being an accessory. (Pen. Code, § 32.) Ms. Hanson was placed on probation. After argument, we asked the parties on two occasions to brief certain issues relating to sentencing. We affirm the judgments with minor sentencing modifications.

II. FACTS

Los Angeles County Deputy Sheriff Alisha Jamison and a partner stopped a Gray Mustang driven by Mr. Lane. Ms. Hanson was in the rear passenger seat. As the deputies approached the Mustang, Mr. Lane was “moving around” and handed “something white” back to Ms. Hanson who was in the back seat. Ms. Hanson then reached into the front of her pants in the waistband area. Ms. Hanson was observed shoving “something” down the front of her pants. Deputy Jamison then yelled at the car occupants. Deputy Jamison testified, “I yelled at them to get - - put their hands up so I could see their hands.” Ms. Hanson was removed from the Mustang and searched. Deputy Jamison found a methamphetamine pipe wrapped in white toilet paper and two credit cards belonging to Colleen Jensen, a Walnut Creek resident. There was white residue in the methamphetamine pipe. The residue consisted of .08 grams of methamphetamine. Only .02 grams is a usable amount of methamphetamine. The

passenger in the front seat, Eric Bukowski, was searched. He had an envelope with 37 different checks and methamphetamine in his shoe. One of the checks found in Mr. Bukowski's possession was made out to Mr. Lane. Mr. Lane, the driver, had approximately \$4,000 in cash in his possession.

Detective Anthony Peraita interviewed Ms. Hanson. Ms. Hanson was asked why she was being held in the sheriff's station. She responded, "Because I had a pipe full of dope." As to the credit cards, Detective Peraita described Ms. Hanson's answer, "She said they were given to her to be held from a friend named Stacy Johnson." Ms. Hanson believed the two cards were stolen. Ms. Hanson could not provide Ms. Johnson's address, telephone number or other contact information to Detective Peraita. Ms. Hanson said Mr. Lane was her boyfriend.

Mr. Bukowski testified he tossed the pipe to Ms. Hanson. He always carried a pipe in his pocket. Mr. Bukowski testified, "I tossed it back to her so I could get the dope in my shoe, but I didn't have time to get it back from her." He threw the checks under the seat and put the methamphetamine in his shoe. Mr. Bukowski described the events differently from Deputy Jamison. Mr. Bukowski told the authorities that the methamphetamine belonged to him. (Deputy Jamison denied that Mr. Bukowski claimed the methamphetamine pipe was his. Detective Peraita gave the same testimony.) During the encounter with the deputies, Mr. Bukowski testified he was "high" after using methamphetamine. The following occurred during direct examination by Mr. Lane's attorney: "Q . . . Did you tell the detective - - the police officers that Todd Lane didn't have anything to do with this? [¶] A Um, I believe so. Yeah." Mr. Bukowski testified to making the same statement to Detective Peraita.

Mr. Bukowski never used methamphetamine in front of Mr. Lane despite the fact they saw each other two or three times per week. As to the checks, Mr. Bukowski testified he found them by the side of a road in Colton, California. He could not remember the name of the street where he found the checks but it was under a freeway overpass. As noted, one of the checks was made out to Mr. Lane. Mr. Bukowski admitted he supported his drug addiction by stealing checks and cashing them.

He pled guilty to forgery in this case after being charged in seven counts. Mr. Bukowski testified he wrote the court to accept responsibility for his misconduct. The court file contains no such letter. In 1996, Mr. Bukowski was convicted of providing false identification to a peace officer. In 2001, Mr. Bukowski was convicted of providing false identification to a police officer. In 2006 Mr. Bukowski was convicted of vehicle theft and receiving stolen property.

III. DISCUSSION

A. Ms. Hanson's Conviction For Being An Accessory And Methamphetamine Possession

Ms. Hanson argues that she cannot be convicted of both being in possession of the methamphetamine and being a Penal Code section 32 accessory. Ms. Hanson was alleged in the amended information to have knowledge of Mr. Lane's methamphetamine possession and aided him in an effort to avoid his conviction. The evidence indicated Mr. Lane possessed methamphetamine. But a jury could find there was *no* evidence Ms. Hanson knew Mr. Lane possessed methamphetamine on April 23, 2010, as the deputies approached. As the deputies approached their parked car, Mr. Lane then tossed the methamphetamine back to Ms. Hanson. It was only after Mr. Lane tossed the methamphetamine to her that there is substantial evidence she discovered Mr. Lane possessed the contraband. Ms. Hanson had two options. Ms. Hanson's first option was to advise the deputies Mr. Lane had just tossed the contraband back to her. The second option was to secrete the contraband in her pants, as she did, in an effort to conceal Mr. Lane's methamphetamine possession from the deputies. The jury could find Ms. Hanson selected the second option—concealing the methamphetamine from the deputies in an effort to protect Mr. Lane. She then secreted the methamphetamine in her pants. A jury could reasonably find there was *no* joint dominion and control of the methamphetamine once she secreted the contraband in her pants. Thus, Ms. Hanson can

be convicted of both her own methamphetamine possession and concealing Mr. Lane's. (*People v. Wallin* (1948) 32 Cal.2d 803, 806-807; *In re Eduardo M.* (2006) 140 Cal.App.4th 1351, 1357; *People v. Mouton* (1993) 15 Cal.App.4th 1313, 1324-1325; *People v. Riley* (1993) 20 Cal.App.4th 1808, 1814-1817.)

B. New Trial Motion

Mr. Lane argues his new trial motion should have been granted. As noted, Mr. Bukowski testified in Mr. Lane's behalf. Mr. Bukowski testified he tossed the pipe containing the methamphetamine to Ms. Hanson. Mr. Bukowski testified he was trying to get to the methamphetamine out of his shoe. Further, Mr. Bukowski testified he informed the authorities the methamphetamine in the pipe was his. Deputy Jamison and Detective Peraita denied that ever happened.

However, the new trial motion arose because Mr. Bukowski testified he wrote "a confession letter" to a judge in the El Monte "municipal" court and the district attorney's office. While incarcerated, he wrote the letters before he had been convicted and it was sent to an unspecified jurist in the El Monte courthouse. Mr. Bukowski could not remember the identity of the judge the letter was sent to. Nor could Mr. Bukowski remember how he learned of the courthouse address. Mr. Bukowski testified he had to send one letter to the El Monte courthouse twice. At one point, Mr. Bukowski could not remember when he wrote the letters. At another point, he testified one of them was written on May 5, the date on the letter. When asked whether this case had been "discussed" with Mr. Lane before the letter was sent, Mr. Bukowski cryptically testified: "Discussed it, no. Not really. We talked about it, though, I told him what I was going to do." When he pled guilty to one of the charges pending against him, no reference was made to the letter. Mr. Bukowski gave a copy of the letter to Mr. Lane. The upshot of the letter was described by Mr. Bukowski, "Basically stating that everything illegal in that vehicle was mine and that both of them had no idea that I had it in my possession." When pressed though, Mr. Bukowski denied knowing about the stolen credit cards in

Ms. Hanson's possession. At the prosecutor's request, the trial court took judicial notice of Mr. Bukowski's superior court file. In the jurors' presence, the trial court stated: "The court takes judicial notice of the court file in KA090420 belonging to Eric Bukowski. There is an executed waiver form indicating his plea to one count in this matter, and the court upon reviewing the file and its contents does not find a letter written to a judge. Thank you."

After the verdicts were returned, a deputy court clerk discovered a letter written by Mr. Bukowski in the superior court file for this case. Mr. Lane then filed a new trial motion. The sole ground asserted in the new trial motion is newly discovered evidence. The new trial opposition argues: the evidence was not newly discovered as Mr. Lane was aware of its existence; the letter was cumulative evidence; and the defense failed to exercise due diligence in securing the letter. The new trial motion was denied. The trial court ruled: the evidence was not newly discovered; the proffered letter was cumulative; the defense had failed to act with reasonable diligence; and there was no reasonable probability of a different result had Mr. Bukowski's letter in this case's superior court file been uncovered.

In ruling on a new trial motion based on newly discovered evidence, a trial court must assess whether: the evidence, and not merely its materiality, is newly discovered; the evidence is cumulative; there is a reasonably probable result in the event of a retrial; the defendant acted with reasonable diligence; and these facts be shown by the best available evidence. (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1252-1253; *People v. Delgado* (1993) 5 Cal.4th 312, 328.) We review the order denying the new trial motion for an abuse of discretion. (*People v. Coffman* (2004) 34 Cal.4th 1, 127; *People v. Navarette* (2003) 30 Cal.4th 458, 526.)

We have secured the superior court file in this and Mr. Bukowski's case as well as all of the evidence. No abuse of discretion occurred. We agree with the Attorney General the trial court could reasonably find the evidence was not newly discovered. Defendant and Mr. Bukowski knew of its existence before trial. Defendant had been provided a copy of the letter by Mr. Bukowski (*People v. McDaniel* (1976) 16 Cal.3d

156, 179; *People v. Greenwood* (1957) 47 Cal.2d 819, 822.) And without abusing its discretion, the trial court could, as it did, rule the fact Mr. Bukowski wrote the incriminating letter was merely cumulative to his testimony. (*People v. Gonzales* (2011) 52 Cal.4th 254, 333; *People v. Padilla* (1995) 11 Cal.4th 891, 961 overruled on other grounds in *People v. Hill* (1998) 17 Cal.4th 800, 823, fn.1.)

Finally, the trial court did not abuse its discretion when it ruled there was no reasonable probability of a different result. Mr. Bukowski was impeached by his lengthy criminal record. Mr. Bukowski admitted being Mr. Lane's friend. Further, Mr. Bukowski gave inconsistent testimony about the letters he had written. More to the point, Mr. Bukowski claimed to have written the trial judge in *El Monte*. The letter purportedly written to the El Monte judge was not in the superior court file. That was undisputedly true. Mr. Bukowski never testified he sent a letter to the trial court which sits in Pomona. There was no reasonable probability of a different result had the letter in the superior court file in the Pomona courthouse been discovered prior to trial. (Cal. Const., art. VI, § 13; *People v. Padilla, supra*, 11 Cal.4th at pp. 960-961.)

C. Sentencing Issues

1. Dismissal of Ms. Hanson's Receiving Stolen Property And Accessory Convictions.

Ms. Hanson was convicted of receiving stolen property and being an accessory as well as methamphetamine possession. Ms. Hanson asserts that the trial court did not know it had the discretion to dismiss those counts pursuant to Penal Code section 1385, subdivision (a). If those two felony counts were dismissed, Ms. Hanson would have been eligible for Penal Code section 1210.1 et seq. drug offender probation.

At the probation and sentencing hearing, Ms. Hanson's counsel, Rubiya Nur, never requested the trial court exercise its Penal Code section 1385, subdivision (a) discretion on its own motion. Ms. Nur began her argument by confirming that the deputy district attorney, Duke Chau, agreed to only request a maximum of 180 days in county

jail. Ms. Nur's argument was as follows: "Not to take too much of the court's time. In that event, Your Honor, at this time I am actually going to submit on that to the court. We have credits, Your Honor, of 53, plus 53, 106 days. So I was going to request that the court would consider, because Miss Hanson has very young children, if the court would consider a time served sentence so she can be released out of the Pomona courthouse instead of going to Lynwood and for them to figure out that it's 180 days and it's 106 and when we do release her. That would be my request, Your Honor. [¶] And, furthermore, I'm trying to strategize and trying to request the court based on her – her no priors, based on the probation report which is positive, and actually agreeing with Mr. Chau, my opposing counsel here, on how Miss Hanson got where she got today because of her association with the co-defendant. [¶] And Your Honor heard the evidence. It was pretty clear how Miss Hanson got in possession, came into possession of the controlled substance. I was going to request of the court if the court would consider us coming back in a year. [¶] Miss Hanson stays on probation. This is a formal probation, and if the court would consider reducing the charges to a misdemeanor at that point based on her record that she is going to have the next one year. Again, I'm open to Your Honor – court's suggestion in response to that. Based on Miss Hanson's having no prior record, based on the fact that she has three young children, and specifically based on the evidence as Your Honor clearly saw that Miss Hanson's culpability. There is no excuse for hanging out with the wrong people, and I'm glad that Miss Hanson got a lesson at this point in her life with this kind of a charge as opposed to we all know we have tried cases of a much more dangerous situation than these charges. Submit, Your Honor."

The trial court ruled: "Miss Hanson appears to be eligible for probation within the law. Miss Hanson – there are some circumstances in aggravation for Miss Hanson. The manner in which the crime is carried out indicates some planning, sophistication, and professionalism. I say that with respect to the credit cards. She was convicted of the possession of stolen property. [¶] At the time that Mr. Lane handed that white object to Miss Hanson and she stuffed that white object in her waistband area, that likewise in the waistband area were two credit cards. Two credit cards belonging to Miss Jensen who

believes the credit cards were sent to one of her homes in Anaheim, California. She's expecting them in the mail. Somehow they never got to her. They somehow ended up in the waistband of Miss Hanson, indicating to this court some level of planning, sophistication, or the like on behalf of Miss Hanson. [¶] There are circumstances in mitigation for Miss Hanson in that she has no prior criminal convictions, and, as I said at the outset, she is eligible for probation. Based upon her lack of criminal records, the court will be granting probation in this matter to Miss Hanson. [¶] Miss Hanson, your lawyer is asking that the court give you credit time served. I'm not inclined to give you credit time served. If it was just a drug count, I would say credit time served, and you would be released today, but you know what, you got the credit cards belonging to Miss Jensen and can only speculate that somebody went into the mailbox, took them out, and somehow they came into your waistband, or you work for her credit card company and somehow they ended up in your waistband. Certainly you did not have permission to have those."

To begin with, this entire issue has been forfeited. As noted, Ms. Nur, Ms. Hanson's counsel, never requested the trial court exercise its Penal Code section 1385, subdivision (a) discretion on its own motion. The failure to ask the trial court to dismiss the accessory and receiving stolen property convictions on its own motion forfeits the issue. (*People v. Carmony* (2004) 33 Cal.4th 367, 375-376; see *People v. Scott* (1994) 9 Cal.4th 331, 352-353.)

Further, there is no evidence the trial court misunderstood its discretion. A trial court is presumed to understand and properly exercise its sentencing discretion. (*People v. Moran* (1970) 1 Cal.3d 755, 762; *People v. Gutierrez* (2009) 174 Cal.App.4th 515, 527.) There is no merit to Ms. Hanson's argument that the trial court did not realize it had the authority to dismiss the two nondrug felony convictions. Ms. Hanson refers to the trial court's reasons for refusing to allow her to remain on bail after the jury verdicts on the three felony offenses was returned. The circumstances of bail related issues are legally different from those present when making a Penal Code section 1385, subdivision (a) dismissal decision. (Cal. Const., art. I, § 28, subd. (f)(3) [bail]; *People v. Williams*

(1998) 17 Cal.4th 148, 159 [dismissal under Pen. Code, § 1385, subd. (a)].) Moreover, as noted, the trial court expressed its detailed analysis why jail time was warranted based on the circumstances of the three felonies. There is no reason to believe that had the trial court been aware of its authority to strike the nondrug offenses it would have acted differently. Thus, we cannot order remand for resentencing. (*People v. Belmontes* (1983) 34 Cal.3d 335, 348, fn. 8; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 530, fn. 13.)

2. Penalties and surcharge on Ms. Hanson's drug laboratory fee

As to Ms. Hanson, the trial court imposed a Health and Safety Code section 11372.5, subdivision (a) drug laboratory fee. But the mandatory penalties and surcharge were not orally imposed. (*People v. Sharret* (2011) 191 Cal.App.4th 859, 864; *People v. Knightbent* (2010) 186 Cal.App.4th 1105, 1109; *People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1528-1530.) Upon remittitur issuance, assuming Ms. Hanson has the ability to pay, the trial court is to impose the following on the \$50 Health and Safety Code section 11372.5, subdivision (a) drug laboratory fee: a \$50 state penalty under Penal Code section 1464, subdivision (a)(1); a \$35 county penalty pursuant to Government Code section 76000, subdivision (a)(1); a \$10 Penal Code section 1465.7, subdivision (a) state surcharge; a \$15 Government Code section 70372, subdivision (a)(1) state court construction penalty; a \$10 Government Code section 76000.5, subdivision (a)(1) emergency medical services penalty; a \$5 Government Code section 76104.6, subdivision (a)(1) deoxyribonucleic acid penalty; and a \$5 Government Code section 76104.7, subdivision (a) state-only deoxyribonucleic acid penalty.

3. Ms. Hanson's probation revocation fine

The clerk's minutes incorrectly state that the trial court imposed a Penal Code section 1202.45 parole restitution fine. In fact, the trial court orally imposed a Penal

Code section 1202.44 probation restitution fine. The trial court's oral pronouncement of judgment is controlling. (*People v. Mesa* (1975) 14 Cal.3d 466, 471; *People v. Hartsell* (1973) 34 Cal.App.3d 8, 14.) Thus, the clerk's minutes must be corrected to show that a Penal Code section 1202.44 probation restitution fine was imposed. The reference to the Penal Code section 1202.45 parole restitution fine must be deleted from the minutes.

4. Ms. Hanson's probation condition

Ms. Lane argues that the probation condition that she stay away from places where drug users congregate is overbroad because it does not include a knowledge element. We agree. (*In re Sheena K.* (2007) 40 Cal.4th 875, 891-892; *People v. Garcia* (1993) 19 Cal.App.4th 97, 102.) Upon remittitur issuance, the no congregation probation condition is to be modified to include a knowledge element.

5. Mr. Lane's prison sentence

At the probation and sentence hearing, Mr. Lane's attorney was Kirk Tarman. Mr. Tarman asked that Mr. Lane be placed on probation; either Penal Code sections 1203.23 standard or 1210.1 et seq. drug probation. The trial court denied Mr. Lane's probation request and sentenced him to prison for nine years: "The Court: Mr. Lane, there are a number of circumstances in aggravation for you. The mitigating facts, if any, are few. I really don't see any factors in mitigation. There was some planning and/or knowledge and/or sophistication on your behalf with respect to the passing of the drugs, pipe, to Miss Hanson. You knew enough given your criminal history to get rid of it and pass that article to her. That indicates some planning and sophistication or professionalism on your part. Likewise, your adult criminal history has a number of prior convictions which does not bode well for you, and you served . . . five prior prison terms. Your performance on probation and/or parole has been unsatisfactory. You are ineligible

legally for probation under Penal Code section 1203[, subdivision] (e)(4). [¶] In this situation, the Court finds that the aggravating factors outweigh any factors in mitigation. The only facts in mitigation that I heard today would be from your lawyer. I am considering those, that you're a veteran, served this country based upon your attorney's representations, but it's that criminal history that hurts you the most, Mr. Lane. And in light of that, the Court will be sentencing you to the high term. [¶] Probation is denied and sentence is imposed as follows: The defendant is sentenced to the state prison for a total of [nine] years. The Court selects the high term of [four] years for the base term as to count 1, plus [five] consecutive years which is required by law based upon the five priors pursuant to Penal Code section 667.5, subdivision (b), for a total of [nine] years. [¶] As to count 2, the Health and Safety Code section 11377, it's high term of three years imposed and stayed pursuant to Penal Code section 654."

Mr. Lane argues: he should have been placed on Penal Code section 1210.1 drug probation; the trial court's reliance on Penal Code section 1203, subdivision (e)(4) to deny probation was error; his possession of the methamphetamine was for personal use; the trial court did not understand its discretion to dismiss the Penal Code section 667.5, subdivisions (b) prior prison term enhancements. To begin with, Mr. Lane was subsequently sentenced to prison in San Bernardino County. We have judicially noticed the docket online docket which shows he was sentenced to prison in San Bernardino County after he appealed here. Any contention he is entitled to Penal Code section 1210.1 drug probation is now moot. (Pen. Code, § 1210, subd. (a); *People v. Dove* (2004) 124 Cal.App.4th 1, 6-7, 10-11; *People v. Glasper* (2003) 113 Cal.App.4th 1104, 1115-1117; *People v. Barasa* (2002) 103 Cal.App.4th 287, 295-296; see *People v. Atwood* (2003) 110 Cal.App.4th 805, 812.) We are unpersuaded by Mr. Lane's speculative arguments he would not have been sentenced to prison in San Bernardino County had he been granted Penal Code section 1210.1 drug probation here.

Even if the issue is moot, Mr. Lane failed to demonstrate the trial court abused its discretion by impliedly concluding he was ineligible for Penal Code section 1210.1 drug probation. The trial court is presumed to understand the scope of its sentencing

discretion. (*People v. Jeffers* (1987) 43 Cal.3d 984, 1000; *Ross v. Superior Court* (1977) 19 Cal.3d 899, 913.) An accused who transports drugs for other than personal use is ineligible for Penal Code section 1210.1 drug probation. (Pen. Code, § 1210, subd. (a); *People v. Dove, supra*, 124 Cal.App.4th at pp. 6-7, 10-11; *People v. Glasper, supra*, 113 Cal.App.4th at pp. 1115-1117; *People v. Barasa, supra*, 103 Cal.App.4th at pp. 295-296; see *People v. Atwood, supra*, 110 Cal.App.4th at p. 812.) Mr. Lane had the burden of proving he transported the methamphetamine for personal use. (*People v. Glasper, supra*, 113 Cal.App.4th at pp. 1115-1117; *People v. Barasa, supra*, 103 Cal.App.4th at pp. 294-296.) The implied finding that the transportation was not for personal use need not be stated on the record. (*People v. Dove, supra*, 124 Cal.App.4th at p. 10.)

Here there is substantial evidence Mr. Lane was involved in more than the mere transportation of methamphetamine for *personal use*. In the presence of the deputies, Mr. Lane tossed some methamphetamine to Ms. Hanson. And Mr. Lane was driving Mr. Bukowski, a good friend. Mr. Bukowski concealed methamphetamine in his shoe. During the post-arrest investigation, Mr. Bukowski said that Mr. Lane “did not have anything to do with this” in reference to the methamphetamine possession. The jury concluded beyond a reasonable doubt this was in fact untrue. Also, Mr. Bukowski told the authorities all the methamphetamine belonged to him. This was found by the jury to be untrue and is further evidence an effort to protect Mr. Lane during the post-arrest investigation. One of the checks found in Mr. Bukowski’s possession was made out to Mr. Lane which is indicative a broader drug related joint criminal enterprise. Mr. Lane, the driver, had approximately \$4,000 in cash in his possession; a sum drug traffickers could be expected to carry. In a period of seconds, all three occupants of the car being driven by Mr. Lane were in possession of methamphetamine. The amount of methamphetamine in the pipe Mr. Lane tossed to Ms. Hanson was four times the amount necessary for personal use. And the methamphetamine found in Mr. Bukowski’s shoe is depicted in exhibit No. 3-A. The methamphetamine found in Ms. Hanson’s possession is depicted in exhibit No. 3-B. The quantity of the methamphetamine in exhibit No. 3-A, Mr. Bukowski’s, is *extraordinarily greater* than that in exhibit No. 3-B, Ms. Hanson’s.

The trial court could reasonably conclude Mr. Lane failed to prove the methamphetamine he was transporting was for purposes of other than personal use. (*People v. Glasper*, *supra*, 113 Cal.App.4th at pp. 1115-1117; *People v. Barasa*, *supra*, 103 Cal.App.4th at pp. 294-296.)

6. Penal Code section 1203, subdivision (e)(4)

Mr. Lane argues the trial court did not know it had authority to grant Penal Code section 1210.1(a) drug probation. As evidence, Mr. Lane relies on the trial court's reference to Penal Code section 1203, subdivision (e)(4). As noted, the trial court is presumed to understand its sentencing discretion. (*People v. Jeffers*, *supra*, 43 Cal.3d at p. 1000; *Ross v. Superior Court*, *supra*, 19 Cal.3d at p. 913.) Here, there is no basis for concluding the trial court was confused. Mr. Lane has an extraordinary extensive record. The trial court's statement of reasons evinces an understanding of sentencing law. The fact the trial court referred to Penal Code section 1203, subdivision (e)(4)¹ is not evidence of any confusion. The trial court was barred from granting non-drug probation to an accused in Mr. Lane's situation. The trial court's reference to Penal Code section 1203, subdivision (e)(4) related to the nondrug probation issue. And given Mr. Lane's criminal record, the trial court could reasonably cite to Penal Code section 1203, subdivision (e)(4) as a basis to sentence him to prison.

¹ Penal Code section 1203, subdivision (e)(4) states: "(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons: [¶] (4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony."

7. The prior prison terms

Mr. Lane argues that the trial court did not understand it had the discretion to strike any of his prior prison terms. Mr. Lane received following prior prison commitments: his March 19, 1996 sixteen-month sentence for drug possession (Health & Saf. Code, § 11377, subd. (a)); his November 15, 2000 two-year sentence for taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a)); his December 3, 2001 sixteen month sentence for forgery (Pen. Code, § 470, subd. (a)); his September 23, 2005 two-year sentences for forgery and receiving stolen property (Pen. Code, §§ 470, subd. (a), 496, subd. (a)); and his September 19, 2007 sentences for forgery and stolen check possession. (Pen. Code, §§ 470, subd. (a), 475, subd. (b).) As a result, in the present case, the trial court imposed five years for Penal Code section 667.5, subdivision (b) prior prison term enhancements.

And, as discussed earlier in detail, when sentenced, Mr. Lane was the subject of no bail hold from a pending forgery case in San Bernardino. Further, he had previously been convicted of the following misdemeanors: on January 26, 1993, two counts of being under the influence of drugs (Health & Saf. Code, § 11550, subd. (a)); on June 17, 1993, of providing false identification to a peace officer (Pen. Code, § 148.9, subd. (a)); on June 2, 1993, of violating a promise to appear for a work program (Pen. Code, § 4024.2, subd. (c)); and on July 20, 1994, of petty theft. (Pen. Code, § 488.) In addition, Mr. Lane was convicted of two federal offenses on March 20, 1998, and January 22, 2002, arising from possession of stolen mail.

There is no merit to Mr. Lane's contention he is entitled to any relief because the trial court misapprehended its Penal Code section 1385, subdivision (a) sentencing options. To begin with, Mr. Lane never requested at any time that the prior prison term enhancements be stricken pursuant to Penal Code section 1385, subdivision (a). The entire issue is therefore forfeited. (*People v. Carmony, supra*, 33 Cal.4th at pp. 375-376; see *People v. Scott, supra*, 9 Cal.4th at pp. 352-353.) In any event, it is presumed the trial court was aware of its sentencing discretion. (*People v. Jeffers, supra*, 43 Cal.3d at p.

1000; *Ross v. Superior Court*, *supra*, 19 Cal.3d at p. 913.) Finally, there is no reasonable probability the trial court would have stricken any of the prior prison terms: Mr. Lane has been convicted of felonies on eight occasions; he has been convicted of six misdemeanors; and he has sustained two federal mail theft related convictions. He is remorseless. Mr. Lane has failed to identify how the interests of justice would be served if he were not incarcerated for the maximum allowable time. Any alleged error is harmless. (*People v. Belmontes*, *supra*, 34 Cal.3d at p. 348, fn. 8; *People v. Superior Court (Romero)*, *supra*, 13 Cal.4th at p. 530, fn. 13.)

8. Mr. Lane's conduct credits award

Mr. Lane was given credit for 323 days actually served and 323 days of conduct credits. Mr. Lane was entitled to two days of conduct credits for every two days spent in custody under the provisions of Penal Code section 4019, subdivision (f) in effect on the date he transported the methamphetamine. (Stats. 2009, ch. 28, § 50; Sen. Bill No. 18 (2009 3rd Ex. Sess.) § 50.) However, Mr. Lane had served 323 days in custody prior to the imposition of sentence. Since Mr. Lane was only entitled to 2 days of conduct credit for every 2 days he served, he is entitled to only 322 days of conduct credit.

IV. DISPOSITION

As to defendant, Amber Ann Hanson, the judgment is modified to impose the penalties and surcharge on the Health and Safety Code section 11372.5, subdivision (a) drug laboratory fee. The modification is to occur as discussed in part III(C)(2). In addition, the no congregation probation condition is to be modified as discussed in part III(C)(3). Finally, as to her, the clerk's minutes are to be corrected to reflect that a Penal Code section 1202.45 probation restitution fine was imposed. The reference to the Penal Code section 1202.45 parole restitution fine is to be stricken.

As to defendant, Todd Lee Lane, the amount of presentence conduct credits is reduced from 323 to 322 days as discussed in part III(C)(5). Upon remittitur issuance, the superior court clerk is directed to prepare an amended abstract of judgment reflecting the corrected presentence conduct credits award. The superior court clerk is to then forward the amended abstract of judgment to the Department of Corrections and Rehabilitation. The judgments are affirmed in all other respects.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.